HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE D APPARAO

Thursday, the 9th day of March, 2006

W.P.No.7016 of 2004 & I.T.T.A.No.453 of 2005

Between:

Smt.V.Sunanda .. Petitioner

and

1. The Chief Commissioner of Income Tax-1,

Hyderabad and another. . Respondents.

COMMON ORDER (Per Hon'ble Sri Justice D.Apparao):

The assessee filed appeal against the orders of the Income Tax Appellate Tribunal, Hyderabad, dated
15-12-2003 in dismissing the appeals, and confirming the orders of the Commissioner of Income Tax (Appeals)-V, Hyderabad, rejecting her claim towards agricultural income.

2. She sought a Writ of Certiorari when her claim for waiver of interest levied under Sections 234-A and 234-B of the Income Tax Act, 1961 (for brevity 'the Act, 1961'), was rejected by the Chief Commissioner of

Income Tax, Hyderabad by order dated 10-03-2004.

3. Since common points are involved in these two appeals, they are taken up together and disposed of by way of common order.

4. Smt.V.Sunanda is an Income Tax assessee. She filed Income Tax returns on 08-01-1999 for the assessment years 1996-97, 1997-98 and 1998-99 before the Income Tax Officer declaring income, among other things, a huge agricultural income for several years, since 1982-83, on the ground that her grandfather Sri Vithal Pawar purchased Ac.28-20 guntas of agricultural lands in the year 1981 and the same were leased out from time to time and she was getting agricultural income annually, but it was kept with him as she was a minor. Her grandfather informed this before his death in 1996, with an advice to get registration as soon as possible for the sake of valid title deeds. Till his death, Mr.Vithal Paar was alone looking after the agricultural lands and the related transactions with the cultivators, utilization of funds and accruals thereon. Though she got married in 1993, only after 1996 her husband had taken care of affairs of income and got the lands registered in the year 1998.

5. The Income Tax Officer as well as appellate authority considered the plea of the appellant by referring to the Pahani and other voluminous oral and documentary evidence and opined that “the story of purchase of the lease lands of Ac.28.20 guntas in 1981 by Sri Ramesh Pawar towards “Sthreedhan” to Smt.Sunanda, is totally false. Further, the lease agreements purported to have been executed since 1982 to 1999 are fabricated, created and filed before Income-tax authorities in the course of assessment proceedings with a malafide intention to explain the sources for the investments made in the hands of the assessee.” The investments made by the assessee during the financial year relevant for the assessment years 1996-97, 1997-98 and 1998-99 have therefore no known sources and therefore to be treated as “unexplained investments” in the hands of the assessee. The conduct of the assessee clearly establishes the fact that she was making an ill-advised attempt to look for sources to explain away her investments in later years by filing I.T. &

W.T. returns for more than 10 years at a time, to legalize the source of non-existing agricultural income.

6. This sort of plea was necessitated in view of her unexplained investments towards capital in the firms run in the name and style M/s. Swamy Ayyappa Transport, M/s.Kalyani Wines, Karimnagar, and M/s.Vijaya Picture Palace, Godavarikhani and also in purchase of plot at Hyderabad. The authorities have consistently held that the claim of the assessee as to the kaul amount received from various alleged lessees from the year 1981 onwards is not supported by any valid evidence. There was nothing on record to suggest that there was sale of agricultural produce by the lessees.

7. The Income Tax Officer and later, the Commissioner for Income Tax (Appeals) and finally, the Income Tax Appellate Tribunal have consistently held that her plea that she got agricultural income for several years from agricultural lands was disbelieved. The authorities below have appreciated the facts and law, after exhaustively considering the evidence placed in this regard. The findings cannot be said to be perverse or based upon the facts which could never be reasonably entertained.

8. The learned counsel for the appellant contends that the authorities were erred in holding that the lands do not belong to the appellant which were registered in the year 1998 and also by virtue of Section 5 (a) of the A.P. Record of Rights in Land and Pattadar Pass Books Act, 1971 (for brevity ‘the Act, 1971’).

9. Evidently, no Certificate as contemplated under Section 5 (a) of the Act, 1971, was given in favour of her grandfather or in favour of the appellant making transfer of the title. Even assuming without admitting that such a transfer had taken place, it would no way show that either she or her grandfather had earned agricultural income for all these years from 1983 onwards and the same was handed over to the assessee.

10. Unless there is a genuine question of law that arises for

determination in the appeal, such a question cannot framed for the purpose of determination. When the appellant contends that documents of title were executed in her favour in the year 1996, the question of falling back on pattadar pass book will not arise, even the pattadar passbook said to have been given to her was only in the year 1998. Therefore, it cannot be said that she had agricultural income derived from Ac.28-20 guntas of agricultural land. The authorities have found that her plea that she was given huge amounts of Rs.25,00,000/- towards agricultural income cannot be believed. We are in agreement with the said findings of the fact and it does not call for any interference.

11. The Income Tax Officer also levied interest under Sections 234-A and 234-B of the Income Tax Act. During the pendency of the appeal before the Income Tax Appellate Tribunal, she filed a petition before the Chief Commissioner of Income Tax, Hyderabad, for waiver of interest imposed against her on the ground that she herself filed Income Tax returns on 08-01-1999 voluntarily, without being detected by the Income Tax department. Since she was not aware of agricultural income, she has not filed the returns earlier. She further stated that the Assessing Officer erred in levying the interest, therefore, requested either to waive or reduce the interest or levy a nominal amount. She also stated that she undertakes to withdraw the appeal pending before Income Tax Appellate Tribunal against the assessment of investment as income from 'undisclosed sources' and also pay the entire tax outstanding due. The Chief Commissioner of Income Tax, by the impugned order dated 10-03-2004, refused to waive interest on the ground that the department detected the concealed income earned by the assessee which she did not disclose at the time of filing of returns. Against which she filed W.P.No.7016 of 2004 for Writ of Certiorari for quashing the said order.

12. The learned counsel for the appellant contended that levying of interest under Section 234-A and 234-B of the Act, 1961 for the assessment years 1996-97, 1997-98 and
1998-99 is bad under law on the ground of non-application of mind and

non-appreciation of fact in regard to title and income over the agricultural lands.

13. Evidently, the Income Tax Officer levied interest under Section 234-A and 234-B of the Act, 1961 in the very order passed by him on the ground that the appellant made unexplained investments under Section 69-A of the Act, 1961. The said amounts were included in the demand notices. The Supreme Court in ***COMMISSIONER OF INCOME TAX v. RANCHI CLUB LIMITED*** opined that the interest to be calculated with respective income declared in returns and not on the income assessed. It was further held that unless there was specific direction in the assessment order, interest was not leviable through notice of demand.

14. Coming to the facts of the present case, this aspect was dealt by the Chief Commissioner of Income Tax. As earlier pointed out the Income Tax Officer levied interest on the income declared in return, with a specific direction in the very assessment order. Therefore, these contentions do not sustain. There are no questions of law or fact that arise for determination in the appeal as well as in the Writ.

15. In the result, both the appeal as well as the writ petition are dismissed. However, no costs.

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(BILAL NAZKI, J)

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March 9, 2006 (D.APPARAO,J)

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